

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Southern Area
Department of Conservation and Recreation
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia
Tuesday, August 10, 2004

DRAFT MINUTES

SARC Members Present

Ms. Sue H. Fitz-Hugh
Ms. Beverly Harper

Mr. David C. Froggatt
Ms. Gale A. Roberts

SARC Members Not Present

Mr. Michael V. Rodrieguez

DCR Staff Present

Joseph H. Maroon, Director
C. Scott Crafton, Director, Division of Chesapeake Bay Local Assistance
Ms. Martha Little, Chief of Environmental Planning
Ms. Shawn Smith, Principal Planner
Ms. Heather Mackey, Principal Planner
Ms. Nancy Miller, Senior Planner
Ms. Beth Baldwin, Senior Planner
Mr. Brad Belo, Senior Planner
Mr. Jakob Helmboldt, Senior Planner
Ms. Caroline Elliott, DCR, Administrative Specialist
Mr. Michael Fletcher, DCR, Director of Development

Local Government Officials Present

City of Chesapeake

Mr. Joseph H. Durant, Assistant City Attorney
Ms. Amy Ring, Planner

City of Hampton

Mr. Brian Ballard

Henrico County

Mr. Jeff Perry
Mr. Keith White

City of Poquoson

Mr. J.W. Hollingsworth, Director of Planning

Mr. Crafton called the meeting to order at 2:02 p.m. and declared a quorum present. He introduced Ms. Roberts and Ms. Harper as new Board members. He also indicated that for the purposes of this meeting he would serve as chair.

Mr. Crafton introduced Mr. Joe Maroon, Director of the Department of Conservation and Recreation. He reminded members that the Chesapeake Bay Local Assistance Department had merged with DCR on July 1, 2004 and is now the Division of Chesapeake Bay Local Assistance. Mr. Crafton serves as Acting Director of the Division.

Local Program Reviews

Ms. Smith presented the following summary regarding the City of Chesapeake. The City of Chesapeake adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance on December 9, 2003. The City adequately addressed most of the required changes required in the Regulation revisions. However, there are several items that the City must address in order to be fully compliant with the Act and Regulations.

- The majority of these items consist of general clarification of City policies including those ordinance sections related to delineation of perennial water bodies, permitted flood control and BMP facilities, five- year pump-out and wetland restoration.
- The City must be consistent in their inclusion of reference to the Virginia Erosion and Sediment Control Regulations and Stormwater Management Regulations where required.
- The City must revise its list of appurtenant structures related to public road exemptions.

Finally, the City must revise their definition of Resource Protection Area.

Intensely Developed Area (IDA) Designation

As a component of their Chesapeake Bay Preservation Area Overlay District Ordinance, the City of Chesapeake has also designated new Intensely Developed Areas (IDA) as part of their ordinance revision. CBLAD staff worked closely with the City in the identification of IDA areas that met the requirements and intent of the regulations. The City's initial proposal included numerous residential areas; CBLAD expressed its disagreement with the designation of large residential areas as IDAs based on the precedent that has been set in past IDA designations and the intent of the Regulations.

The City agreed with the Department's decision and agreed to exclude the residential areas and pursue the designation of these areas once a protocol had been established for their designation.

As justification for the designation of their IDA areas the City completed the Proposed Intensely Developed Areas Report for the City of Chesapeake in October of 2003. This study included an identification of existing and potential Redevelopment Areas within the City and examined existing conditions within these areas. Ultimately the City identified 5 distinct areas to be designated as IDAs. These areas ranged from 57 – 85% average impervious coverage, and were comprised mostly of industrial, waterfront industrial, and commercially zoned areas.

In addition to their comprehensive review of proposed IDA areas the City has outlined eight strategies to be considered in the implementation of their IDA areas that comply with the Regulations and meet the spirit and intent of the Act and Regulations.

The City is to be commended for cooperating with CBLAD in the IDA designation process and for incorporating forward-thinking strategies for ensuring that IDA development is compatible with the overall goals of the Bay Act.

Based on the above, staff recommends that the local program amendments adopted by the City of Chesapeake on December 9, 2003 be found consistent with the Act and Regulations subject to the condition that the City of Chesapeake adequately address the ten recommendations contained in the staff report no later than March 31, 2005.

Mr. Crafton took a moment to explain the procedures to the new Board members.

Mr. Crafton asked Ms. Ring for comments from the City of Chesapeake.

Ms. Ring distributed a letter to Board members outlining the concerns of the city. By way of the letter the city asked for continuance of the Board review. She said that there are many comments that the city has already addressed and that the city would like additional time to work with staff.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee defer action on the City of Chesapeake as requested and that the matter be brought back to the next SARC meeting for recommendation to the full Board.

SECOND: Mr. Froggatt

DISCUSSION: Ms. Harper asked for clarification of the deferment.

It was explained that the matter would be deferred to the October meeting of the Committee.

VOTE: Motion carried unanimously.

Ms. Smith presented the following summary for the Town of Smithfield.

The Town adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance on April 6, 2004. CBLAD staff worked with the Town in completing the necessary revisions to the Chesapeake Bay Preservation Area Overlay District Ordinance, by providing the Town with preliminary comments via correspondence on January 26, 2004 and through providing follow-up assistance throughout the revision process.

The Town's revised Chesapeake Bay Preservation Overlay District Ordinance addresses many of the required changes. There are, however, required changes that were not addressed in the revised ordinance that must be made for consistency.

- The majority of these items consist of general clarification of Town policies including those ordinance sections related to delineation of perennial water bodies, permitted flood control and BMP facilities and ordinance definitions.
- The Town must designate a specific board , body, commission or committee to consider formal exception requests. The process is in place but no body is identified for handling such requests.

Based on the above staff recommends that the local program amendments adopted by the Town of Smithfield on April 6, 2004 be found consistent with the Act and the Regulations subject to the condition that the Town of Smithfield adequately address the eight recommendations contained in the staff report no later than March 31, 2005.

Staff has discussed the recommendations with Bill Hopkins, Planning and Zoning Administrator for the Town, and the Town concurs with the recommendations and believes they will have no problem in adopting the recommended changes. In addition, Bill notified the Division the Town recently issued a RFQ for updates and revisions to their comprehensive plan and zoning ordinance, where they will once again revisit CBPA issues to ensure that they comply with the Regulations and are consistent throughout the Town's planning process.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Smithfield's amended Phast I program be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60.1 and 2 of the Regulations subject to the condition that the Town of Smithfield adequately address the eight recommendations contained in the staff report no later than March 31, 2005.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Helmboldt presented the following summary for the Town of Ashland.

The Ashland Planning Director, Ms. Allyson Finchum, telephoned that morning to inform him that the Town intended to make the recommended changes administratively. He indicated this was a late notice.

In February, Shawn Smith and Mr. Helmboldt met with Ms. Finchum to go over, in detail, a number of changes to their ordinance.

Ms. Finchum took over as Planning Director in October 2003, late in the process of revising their ordinance, and staff felt it would be best to meet with her to go over line-by-line, the changes that were needed in their ordinance.

The Town of Ashland adopted their local program amendments on March 9, 2004.

The Town's revised Chesapeake Bay Preservation Area ordinance addresses most of the required changes set forth in the revised regulations, however, as a result of a few oversights, changes that were noted in previous meetings and in marked up copies of the ordinance were inadvertently omitted from their revised ordinance.

Staff noted four recommended changes to the Town's Bay Act ordinance that are required for their ordinance to be found consistent. The changes are as follows:

1. The Town failed to revise language under § 4.1-209.c.2 of the ordinance which addresses permitted encroachments on pre-1989 lots as required under § 9 VAC 10-20-130.4.a of the Regulations.

Amend § 4.1-209.c.2 to conform with the requirements outlined under § 9 VAC 10-20-130.4.a of the Regulations by replacing the wording "may modify the width of" with "may permit encroachments into" when referencing buffer encroachments.

2. The Town omitted previous revisions requiring a formal exception process when hearing exception requests. The Town Council had been designated as the body to hear such requests, however, in the final ordinance the Town Manager was designated to hear exceptions (administratively).

Amend § 4.1-214.b. – d. to reinstate the Town Council (or other body) as the designated body that hears formal exception requests, and to reinstate the Board of Zoning Appeals as the body hearing exception appeals.

3. The Town also failed to add language that requires formal exceptions to be considered in a public hearing that has been properly noticed as required under § 9 VAC 10-20-150.C.2.c of the Regulations.

Amend § 4.1-214.b. to include the requirement for both public notice and a public hearing when considering exception requests, in accordance with Virginia state law.

4. Town failed to include an administrative process, including the required conditions, for the expansion of legal principal nonconforming structures, as outlined under § 9 VAC 10-20-150.A and 9 VAC 10-20-150.C.4 of the Regulations.

Amend § 4.1-212 to include the requirement for the Town Manager to make the five findings required for expansion of non-conforming principal structures, and to stipulate that expansion does not apply to accessory structures.

Staff has noted one suggested change to the Town's Bay Act ordinance that is intended for clarification and is not required for their ordinance to be found consistent. The suggested change is as follows:

- Revise Sec. 4.1-214.a by amending the reference to Sec. 4.1-205, which refers to lot size, to properly reference Sec. 4.1-206, which outlines the required conditions for CBPAs, and to which exceptions apply.

Mr. Crafton asked if the town was in agreement with the recommendations. Mr. Helmboldt said that the town indicated that the issues could be handled administratively.

Ms. Fitz-Hugh asked why the deadline was for June 2005 if the issues could be handled administratively.

Ms. Smith said that staff had suggested the changes be administrative because there was some confusion in terms of what they adopted. She said that without clarification staff had to move forward with information available. Also, she noted that staff tries not to overburden a locality with changes. These may be included with other ordinance changes, so additional time was allowed.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that Town of Ashland's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9 VAC10-20-60.1 and 2 of the Regulations subject to the condition that the Town of Ashland undertake and complete the four recommendations in the staff report no later than June 30, 2005.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Smith presented the following summary for the Town of Melfa.

The Town of Melfa adopted its revised Phase I program on January 21, 2004. The Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency. The Town did not revise its CBPA map which includes only the RMA as all land west of Route 13 business as there are no streams appear within the Town boundaries. There are no recommendations for consistency.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Melfa's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Smith presented the following summary for the Town of Belle Haven.

The Town of Belle Haven adopted its revised Phase I program on June 1, 2004. The Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency. The Town did not revise its CBPA maps, but did include the requirement for onsite determination as required under the regulations. The Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Belle Haven's amended Phase I program be found consistent with § 10.1-2019 of the Act and § 9 VAC10-20-60.1 and 2 of the Regulations.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Ms. Smith presented the following summary for the Town of Bloxom.

The Town of Bloxom adopted its revised Phase I program on April 22, 2004. The Department worked with the Town in developing the revised ordinance and there are no recommendations for consistency. The Town did not revise its CBPA maps, but did include the requirement for onsite determination as required under the regulations. The Town's Board of Zoning Appeals was named as the body to hear formal exception requests, should that need arise.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Bloxom's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Helmboldt presented the following summary for Surry County.

He noted that Tyrone Franklin of Surry County staff was not present.

Surry County adopted their local program amendments on May 6, 2004.

The County's revised Chesapeake Bay Preservation Area ordinance addresses all of the required changes set forth in the revised regulations.

Staff had no suggested changes to the County's Bay Act ordinance.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Department that Surry County's amended Phase I program be found consistent with § 10.1-2109 of the Act and § 9 VAC10-20-60.1 and 2 of the Regulations.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Belo presented the following summary for the City of Poquoson. He noted that Mr. J.W. Hollingsworth was representing the City at this meeting.

The City of Poquoson adopted revisions to its Phase I program on May 24, 2004. The City's revised Bay Act program addresses most of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests. Staff recommends three corrections to the City's revised ordinance to ensure consistency with the Regulations.

The first recommendation requires the city to replace direct citations to the Regulations with effective enforcement language. Although local Bay Act ordinances are enabled by the Regulations, they should include all the language necessary to effectively implement and enforce the local Bay Act program without direct reference to specific sections of the Regulations. It appears that the city's ordinance substitutes code citations for regulatory language at least twice.

The second recommendation requires the city to delete additional tree and shrubbery removal language included in Section 11.4-12.d.(1).e of the City's ordinance. The staff feels that this language is overly broad, not enabled by the Regulations, and unnecessary because both the Regulations and ordinance already include language that addresses dead, diseased or dying trees and shrubbery.

Section 11.4-13 (c) describes the City's nonconforming structures policies. Although this section is largely consistent with the Regulations, it does not clearly prohibit the granting of development waivers for the expansion of nonconforming accessory structures through the review committee's administrative process. The third recommendation requires the City to Amend Section 11.4-13(c) to indicate that no exception for the expansion of nonconforming accessory structures will be authorized except after public notice and a hearing, as required by the Regulations.

Having worked closely with the City, the staff feels the necessary changes stem from drafting oversights and do not represent intentionally inconsistent amendments to the local program. Therefore, staff recommends that the local program amendments adopted by City of Poquoson on May 24, 2004 be found consistent with the Act and Regulations subject to the condition that the City of Poquoson undertake and complete the three (3) recommendations contained in the staff report no later than June 30, 2005.

Mr. Hollingsworth, Director of Planning and Community Development, indicated that he had no specific comments but that the City plans to address any necessary ordinance revisions and the recommendations included in the City's compliance evaluation, which was reviewed at the June board meeting, by the end of the year, and perhaps by October.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Poquoson's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC10-20-60 1 and 2 of the Regulations, subject to the condition tha the City undertake and complete the three recommendations included in the staff report no later than June 30, 2005

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Belo presented the following summary for the City of Hampton.

The City of Hampton adopted revisions to its Phase I program on May 12, 2004. The City's revised Bay Act program addresses all of the required Regulation changes, including revisions to definitions, Resource Protection Area (RPA) designation language, site-specific RPA delineation requirements, and the requirement for a formal exception process for all RPA exception requests.

The City administers all CBPA exceptions through its Chesapeake Bay Preservation District Review Committee. The committee is composed of the Chairperson of the Wetlands Board, the Director of Planning, the Building Official, the Zoning Administrator, and the Director of Public Works, or their designees. The review committee handles both administrative waivers and formal exceptions to the local program requiring public notices and hearings for all formal exceptions.

The City of Hampton worked very closely with Staff in revising its Phase I program. Although Staff reviewed multiple drafts, the City's failure to include the definition of

“substantial alteration” in its revised ordinance went unnoticed. Staff feels it is necessary to define this phrase because it is used in the definition of development. However, Staff does not feel that the missing definition will hinder the City’s ability to effectively implement its Phase I program.

Staff recommends that the local program amendments adopted by City of Hampton on May 12, 2004 be found consistent with § 10.1-2109 of the Act and Regulations subject to the condition that the City of Hampton undertake and complete the one (1) recommendation contained in the staff report no later than June 30, 2006.

Mr. Crafton clarified that the reason the date was extended until 2006 was that the City is scheduled for a compliance evaluation. He noted that staff is in the process of reviewing the implementation of local programs. In instances where there are specific recommendations and a compliance review is scheduled in the near future, the date will be extended in order to allow adequate time to address other issues that might arise during the course of the evaluation.

Mr. Crafton asked Mr. Ballard if there were comments on behalf of the City. Mr. Ballard said he had no specific comments regarding the recommendation. He noted that the City is in the process of reviewing IDA issues.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Hampton’s amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations, subject to the conditions that the City undertake and complete the one recommendation included in the staff report no later than June 30, 2006.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Compliance Evaluation

Mr. Helmboldt presented the following summary for Henrico County. He distributed a revised staff report and resolution as a result of last minute meeting with Henrico County staff and noted that Keith White and Jeff Perry were representing Henrico DPW.

In February of 2004 staff commenced with a compliance evaluation of Henrico County's Bay Act Program Administration.

Subsequent meetings to review and select site plans for field inspections were held on April 21 and 26.

Field visits were conducted on May 6, 2004 and were attended by Kelly Ramsey from our Engineering staff, Keith White from Henrico County, and myself.

On August 5, 2004, several staff members met with staff from Henrico County to discuss several of the recommendations included in the report. As a result, we determined that three (3) of the six (6) recommendations were not fully relevant, and it was agreed that staff would prepare a revised report. The substantive changes are as follows:

1. Recommendation #4 was consolidated into the accompanying suggestion regarding BMP maintenance. The County informed staff that West Nile treatment and inspections is driving the prioritization and schedule of BMP inspections, not resulting in a backlog of inspections as was initially believed by staff.
2. Recommendation #5 was determined to be irrelevant after discussions with the County revealed that the report that would be provided to us was the VPDES report that DCR would be receiving in the future. Since the report would be available to us, and since other localities are not required to provide the depth of reporting on their programs that was being asked of Henrico County, it was determined that this should not be required for a finding of compliance.
3. Recommendation #6 became a suggestion as a result of MS19 requirements not being directly applicable to the concerns noted by staff.

Staff now notes three recommendations for compliance:

1. For consistency with §§ 9 VAC 10-20-130.1.a and 9 VAC 10-20-130.6 of the Regulations, the County must revise §10-35 of their Environment ordinance to reflect the WQIA requirements to reflect the review and submittal process that the County actually uses, such that their procedures and requirements are consistent with their ordinance.
2. For consistency with § 9 VAC 10-20-120.6 of the Regulations, the County needs to take action consistently and promptly when responding to E&SC violations and

in issuing stop work orders when violations occur and are not remedied in the time frame afforded by the County.

3. The County must resume their septic pump out notification process upon receipt and approval (by FEMA) of the final GIS layer that is to be used in the screening protocol for identifying properties requiring pump out under § 9 VAC 10-20-120.7 of the Regulations.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Board find that certain aspects of the Henrico County implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and further that Henrico County undertake and complete the three (3) recommendations contained in the staff report no later than September 30, 2005.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Other Business

Mr. Maroon extended a welcome to the new Board members. He noted that the Chesapeake Bay Local Assistance Department merged with the Department of Conservation and Recreation on July 1, 2004.

Because the merger language was contained in the budget bill, a report is due to the House Appropriations and Senate Finance Committees at the end of the month. A copy of this report will be provided to Board members.

Mr. Crafton noted that future Board meetings may be held at alternate locations around the state. He also noted that future meetings will include an orientation to the Department of Conservation and Recreation and an orientation for Board members.

Mr. Maroon reported that the staff has met with the City of Richmond and Chesterfield County. Progress on resolving these matters appears to be underway.

Mr. Crafton noted that Chesterfield has filed an appeal. So if legal action is to be pursued the Department must first go through the appeals process.

Mr. Crafton said that the county has sent a letter. Mr. Chaffee has written the county back indicating that he does not believe the county has legal basis for the appeal. Board members will be provided a copy of this letter.

Mr. Maroon also noted that there is a meeting set with Lancaster County for early September.

There being no further business, the meeting was adjourned.